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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA
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12 TERRY L. CROSS,
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14 Petitioner,

15 v.
16 JEFFERY UTTECHT,
17

18 Respondent.

19 CASE NO. C11-5469 RJB

20 ORDER ADOPTING REPORT AND
21 RECOMMENDATION, DENYING
22 PETITION FOR WRIT OF HABEAS
23 CORPUS, AND DENYING A
24 CERTIFICATE OF
APPEALABILITY

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26 This matter comes before the court on the Report and Recommendation of the Magistrate
27 Judge. Dkt. 21. The court has reviewed the relevant documents and the remainder of the file
28 herein.

29 In this petition for writ of habeas corpus, petitioner presented two claims for relief. Dkt.

30 1. On November 16, 2011, the court dismissed petitioner's unexhausted claim, following his
31 motion to dismiss that claim. See Dkt. 20.

32 On February 29, 2012, U.S. Magistrate Judge J. Richard Creatura issued a Report and
33 Recommendation, recommending that the court deny petitioner's exhausted claim, which was

34 ORDER ADOPTING REPORT AND
RECOMMENDATION, DENYING PETITION
FOR WRIT OF HABEAS CORPUS, AND
DENYING A CERTIFICATE OF
APPEALABILITY- 1

1 that his counsel was ineffective for not having petitioner evaluated for competency. Dkt. 21.
2 The court concurs with the analysis of the magistrate judge. The state court decisions denying
3 relief on this claim did not result in a decision that was contrary to, or involve an unreasonable
4 application of, clearly established federal law, as determined by the Supreme Court; nor did the
5 state court's adjudication result in a decision that was based on an unreasonable determination of
6 the facts in light of the evidence presented to the state courts. See 28 U.S.C. § 2254(d). The
7 petition for writ of habeas corpus should be denied.

8 The court concurs with the magistrate judge that petitioner is not entitled to a Certificate
9 of Appealability. A Certificate of Appealability should be denied.

10 Accordingly, it is hereby **ORDERED** that Report and Recommendation of the Magistrate
11 Judge (Dkt. 21) is **ADOPTED**. The petition for writ of habeas corpus is **DENIED**. A Certificate
12 of Appealability is **DENIED**.

13 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
14 to any party appearing *pro se* at said party's last known address.

15 Dated this 27th day of March, 2012.

Robert G. Bryan

ROBERT J. BRYAN
United States District Judge

24 || ORDER ADOPTING REPORT AND
RECOMMENDATION, DENYING PETITION
FOR WRIT OF HABEAS CORPUS, AND
DENYING A CERTIFICATE OF
APPEALABILITY- 2